Schweizer Local #1752 (UAW) (Schweizer Aircraft Corporation) *and* Clifford Williams

United Automobile, Aerospace & Agricultural Implement Workers of America *and* Clifford Williams. Cases 3–CB–6019–1 and 3–CB–6019–2

December 22, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING, COHEN, AND TRUESDALE

Upon charges filed by Clifford Williams, an Individual, on January 13, 1992, the General Counsel of the National Labor Relations Board issued a complaint on August 12, 1993, against Schweizer Local #1752 (UAW) (the Local) and United Automobile, Aerospace & Agricultural Implement Workers of America (the International), the Respondents, alleging that they have violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act by various acts and conduct. On September 2, 1993, the Respondents filed an answer, admitting in part and denying in part the allegations of the complaint and requesting that the complaint be dismissed.

The complaint alleges in paragraph 9 that the Respondents and Schweizer Aircraft Corporation, the Employer, have been and are now parties to a collective-bargaining agreement containing union-security and dues-checkoff clauses. Article III of the agreement, entitled ''Union Shop,'' requires unit employees to ''become and remain members of the Union as a condition of continued employment.'' Article IV, ''Check-off of Union Membership Dues,'' provides that the Employer will ''deduct Union membership dues . . . from the pay of each employee . . . who in writing, in accordance with the 'Authorization for Check-off of Dues'. . . has voluntarily authorized the company to do so for the period covered thereby.'' Paragraph 10 of the complaint alleges that the Charging Party has been at all relevant times employed by the Employer within the bargaining unit covered by the collective-bargaining agreement. Paragraph 11 alleges that on December 19, 1990, the Charging Party resigned his membership in the Respondents and that by letters of August 7, 1991, he requested the Employer to terminate his checkoff authorization and notified the Respondents of this revocation request. Paragraph 12 alleges that since about September 9, 1991, the Respondents have attempted to collect dues from the Charging Party pursuant to the terminated dues-checkoff authorization by maintaining a grievance alleging that the Employer violated the collective-bargaining agreement by ceasing dues deductions from the Charging Party's wages. Paragraphs 13 and 14 set forth the concluding allegations that the previously described conduct establishes that the Respondents have violated Section 8(b)(1)(A) and (2). The Respondents admit the allegations in paragraphs 10 and 11, as well as that the language quoted in paragraph 9 appears in the collective-bargaining agreement, but assert that the complaint does not set forth the complete text of article IV relating to dues checkoff. The Respondents deny the allegations contained in paragraph 12, but admit that on approximately September 9, 1991, Respondent Local 1752 filed a grievance, and further aver that the grievance was settled on February 12, 1992, that the Charging Party was notified of the settlement by letter of February 19, 1992, and that since that date the Respondents have made no effort to enforce any dues-checkoff obligations against the Charging Party.

On November 16, 1993, the General Counsel filed with the Board a motion to transfer proceedings to the Board and Motion for Summary Judgment, with brief and exhibits attached. On November 18, 1993, the Board issued an order transferring proceeding to the Board and Notice to Show Cause why the motion should not be granted.[1] On November 23, 1993, the General Counsel filed two supplementary exhibits that he referenced but inadvertently omitted from his original motion. On December 23, 1993, the Respondents filed a response to the Notice to Show Cause in which they also ask for summary judgment dismissing the complaint, and a stipulation of certain facts that was entered between the Acting General Counsel and the parties to this proceeding. The Charging Party also filed a brief in response to the Notice to Show Cause.

Ruling on Motion for Summary Judgment

I. ADMITTED OR UNDISPUTED FACTS

The undisputed complaint allegations establish that on July 1, 1966, the Respondent International was certified as the exclusive collective-bargaining representative of all employees in the production and maintenance unit,[2] and since that time, it has represented the employees of that unit through its agent, the Respondent Local. On about February 14, 1991, the Respondents and the Employer entered into, and currently maintain in effect and enforce, a collective-bargaining

[1] On December 28, 1993, the Board issued a corrected Order, deleting an erroneous reference to the Respondents (Unions) having violated Sec. 8(a)(3) of the Act.

[2] The unit consists of ''All production and maintenance employees, including (a) truck driver, (b) production and maintenance employees while working in the Soaring School, with an understanding that in no event will such employees perform work normally performed outside the Soaring School, and (c) production and maintenance test pilots for AG-Cats, gliders and motorgliders.'' Excluded are ''Production test pilots for any other airplanes and for helicopters (b) engineering and experimental test pilots, (c) all cafeteria workers, (d) temporary or casual summer flight instructors, (e) office clerical employees, (f) expediters, (g) professional employees, (h) guards, (i) janitors/watchmen, and (j) supervisors as defined in the National Labor Relations Act.''

agreement that contains the following union-security clause:

Article III—UNION SHOP

> The Company agrees that employees now in jobs covered by this Agreement, and employees employed after the signing of this Agreement shall on and after thirty (30) days from the date of their employment, become and remain members of the Union as a condition of continued employment, provided that nothing herein shall be interpreted to cause a violation of the Labor Management Relations Act of 1947 or any other applicable law.[3]

The agreement also contains the following dues-checkoff clause:

Article IV—CHECK-OFF OF UNION MEMBERSHIP DUES

> The Company agrees to deduct Union membership dues levied by the International Union or Local Union in accordance with the Constitution and by-laws of the Union from the pay of each employee who is or who becomes a member of the Union within the Bargaining Unit, and covered by this Agreement and who in writing, in accordance with the ''Authorization for Check-off of Dues'' as set forth below, has voluntarily authorized the company to do so for the period covered thereby.[4]

It is further uncontroverted that Charging Party Williams has at all relevant times been employed by the Employer within the unit and has been covered by the collective-bargaining agreement.

The Respondents stipulate that the Charging Party began his employment with the Employer on September 27, 1967, and that sometime thereafter, he changed his name from Stanley Young to Clifford Williams. They further stipulate that the Charging Party signed a membership application and a checkoff-authorization card on September 28, 1967, under the name Stanley Young. Although the Employer was not able to locate in its records the Charging Party's executed checkoff authorization, the checkoff form in use at the time the Charging Party executed the authorization contained the following language:

AUTHORIZATION FOR CHECK-OFF OF DUES

To_____ Date_____
Company

> I hereby assign to Local Union No. —, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW AFL–CIO) from any wages earned or to be earned by me as your employee (in my present or future employment by you), such sums as the Financial Officer of said Local Union No. — may certify as due and owing from me as membership dues, including an initiation or reinstatement fee and monthly dues in such sums as may be established from time to time by said local union in accordance with the Constitution of the International Union, UAW AFL–CIO, but not less than $5.00 monthly. I authorize and direct you to deduct such amounts from my pay and to remit same to the Union at such times and in such manner as may be agreed upon between you and the Union at any time while this authorization is in effect.
>
> This assignment, authorization and direction shall be irrevocable for the period of one (1) year from the date of delivery hereof to you, or until the termination of the collective agreement between the Company and the Union which is in force at the time of delivery of this Authorization, whichever occurs sooner; and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year each or for the period of each succeeding applicable collective-bargaining agreement, between the Company and the Union, whichever shall be shorter, unless written notice is given by me to the Company and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year, or of each applicable collective-bargaining agreement between the Company and the Union, whichever occurs sooner.

It is undisputed that on December 19, 1990, Charging Party Williams resigned his membership in the Respondents and, subsequently, on August 7, 1991, requested in writing that the Employer cease giving effect to his dues-checkoff authorization. The Respondents thereafter attempted to compel the Employer to deduct moneys from the Charging Party's wages by virtue of a grievance, dated September 9, 1991, alleg-

[3] The union-shop clause contained in the 1966–1968 collective-bargaining agreement, in effect at the time the Charging Party began his employment with the Employer, does not differ substantively from the current contract provision. It stated:

> The Company agrees that employees now in the bargaining unit shall on and after thirty (30) days from the signing of this Agreement, and employees employed after the signing of this Agreement shall on and after thirty (30) days from the date of their employment, become and remain members of the Union as a condition of continued employment, provided that nothing herein shall be interpreted to cause a violation of the Labor-Management Relations Act of 1947 or any other applicable law.

[4] The only difference between the instant clause and that set forth in the 1966–1968 contract was the addition of the word ''form'' following the words ''Authorization for Check-off of Dues'' and before the word ''as'' in the third from the last line.

ing that the Employer has violated the collective-bargaining agreement ''by ceasing the deduction of fees from Clifford Williams' paycheck, effective 9/5/91,'' and requesting that the Employer ''reinstate appropriate deduction of fees from Clifford Williams' paycheck.'' During February 1992, the Respondents withdrew their grievance and by letter dated February 19, 1992, so notified the Charging Party's counsel. That letter further advised that the Respondents had agreed: (1) not to refile the grievance; (2) not to assert a claim for dues, fees, or other payments from the Charging Party's pay for any period prior to September 28, 1992, or for any period after that date unless the Charging Party executes a new checkoff authorization; and (3) that they will not assert that the Charging Party owes any moneys pursuant to the terms of the ''Union Shop'' provision of the collective-bargaining agreement for any period prior to October 1, 1992.

II. POSITIONS OF THE PARTIES

The General Counsel contends that the Respondents' various admissions (outlined above) as to their conduct, and particularly the fact that the Local Union filed a grievance alleging that the Employer violated the contract by ceasing to deduct dues from the Charging Party's wages, establishes a violation of the Act. The General Counsel asserts that the parties' settlement of the grievance several months after it was filed, and the Respondents' contention that the grievance is, therefore, no longer being ''maintained,'' does not obviate a Board finding that unlawful action did occur. The General Counsel states that the settlement of the grievance did not cure the violation and that further appropriate remedial action, including the posting of a notice, is necessary before a violation of the Act is considered remedied.[5]

The Respondents acknowledge that the facts of this proceeding are undisputed, but assert that they place no reliance upon the settlement of the grievance as a defense to the complaint allegations and argue instead that their actions have been consistent with Sections 7, 8(a)(3), and 8(b)(1)(A) and (2) of the Act. They stress that the Charging Party's attempt to revoke his checkoff authorization occurred while he was subject to a lawful union-security clause and outside the prescribed annual 10-day window period for revocation,[6] which in his case was from September 8 through 18, 1991. Thus, they assert, the Charging Party's attempt to revoke his checkoff on August 7, 1991, more than a month before the window period began, was not timely and should not have been given effect.

The Charging Party asserts that the instant case involves the straightforward application of the principles enunciated in *Lockheed*, and that the sole issue presented here is the legality of the Unions' demand that the Employer continue deducting dues from his wages after he had resigned union membership and revoked his checkoff authorization. The Charging Party contends that the terms of the checkoff itself limit deductions to ''Union membership dues,''[7] and thus do not lawfully contemplate postresignation deductions. The Charging Party argues that *Lockheed* holds that principles of both contract law and voluntary unionism require that if an employee does not explicitly agree to have union dues deducted beyond the period of his/her union membership, then that employee's continued financial support of the union may not be considered voluntary and, therefore, cannot be required, after resignation. Because the language of the checkoff in the instant case, like that in Lockheed, limits an employee's obligation to membership dues, the Charging Party contends that the Respondents cannot lawfully insist upon the continued imposition of financial obligations beyond the period of his union membership.

The Respondents concede that principles of *Lockheed* apply in this proceeding, but they argue that that decision actually supports their position rather than the Charging Party's and the Acting General Counsel's. They contend that in *Lockheed*, the Board's findings were predicated on the fact that there was no lawful union-security clause in effect and, thus, no requirement that employees become or remain union members as a condition of employment. In this case, by contrast, the Charging Party, like all other unit employees of the Employer, was subject to a lawful, negotiated union-security clause under the terms of their collective-bargaining agreement, and had authorized the deduction of dues from his pay under the collective-bargaining agreement's dues-checkoff procedure to fulfill his obligation under the union-security clause. The Respond-

[5] Although the General Counsel cites no case law in support of his arguments in the text of either the complaint or motion for summary judgment, he is apparently relying on *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322 (1991), as providing the basis for finding a violation. That case, inter alia, is cited by the Charging Party in a written statement in support of the unfair labor practice charges that initiated this proceeding. The original charges and the Charging Party's supporting documents are attached to, and thus have been made a part of, the General Counsel's motion. The *Lockheed* decision will be discussed at length infra.

[6] We note that this case does not present any issue related to *CWA v. Beck*, 487 U.S. 735 (1988). Following the Charging Party's resignation from full union membership, an adjustment was made to the amount being deducted from his wages and remitted to the Respondents as a financial core member who objected to payment of full union dues and fees.

[7] The Charging Party's description of the wording of the checkoff authorization is not completely accurate. The authorization, quoted in full earlier in this decision, provides that the employer may deduct such sums as the Union certifies as due and owing ''as membership dues, *including an initiation or reinstatement fee and monthly dues*'' (emphasis added). The Charging Party's characterization of the provision does not, however, alter the thrust of its argument.

ents contend that these distinguishing circumstances raise the very issue specifically reserved at footnote 26 of the *Lockheed* decision, i.e., how the Board would construe, after resignation, a similar checkoff authorization for an employee whose dues obligation continues on grounds other than the checkoff authorization itself.[8] The Respondents assert that there is no Section 7 right to refrain from assisting a union financially insofar as required by a lawful union-security clause. Instead, the checkoff authorization addresses only the *manner* of payment of an ongoing, legitimate financial obligation. The obligation itself finds its source in the union-security clause of the collective-bargaining agreement. Thus, the Respondents argue, because the Charging Party was at all relevant times subject to a union-security requirement, their insistence upon giving effect to the checkoff authorization did not infringe upon his Section 7 rights.

Analysis

As the Respondents and the Charging Party note, the Board in *Lockheed* left open the question whether a union could lawfully insist on continued checkoff of dues as to an employee who resigned union membership and attempted to rescind his checkoff authorization outside the window period, but who continued to owe union dues in at least some amount pursuant to a union-security clause. We now decide that question. For the following reasons, we hold that resignation of membership by an employee who is obligated to pay dues under a lawful union-security clause does not privilege the employee to make an untimely revocation of his checkoff authorization, and therefore a union's efforts aimed at continued enforcement of that checkoff after the employee's resignation do not violate the Act.

As we observed in *Lockheed*,[9] Section 7 of the Act protects not only the right to join and assist unions, but also the right to refrain from doing so, without question, and paying dues to a union is a form of assistance. The Section 7 right to ''refrain from'' joining or assisting labor organizations is expressly qualified by the proviso to Section 8(a)(3) of the Act permitting certain types of agreements—generally referred to as union-security clauses—that require membership in a labor organization as a condition of employment.[10] It has long been settled that the ''membership'' that may be required, ''whittled down to its financial core,'' is simply the payment of union dues and fees.[11] In *Lockheed*, there was no union-security clause in the operative collective-bargaining agreement, so the charging party employee's Section 7 right to refrain from assisting unions by, inter alia, payment of dues, remained without qualification by such a clause. The Board acknowledged, however, that an employee could waive that Section 7 right and could, for example, agree through a checkoff authorization to pay union dues and fees for a certain period irrespective of whether he remained a formal union member. The Board held that an employee's agreement to such an arrangement had to be manifested, however, in clear and unmistakeable language. The Board found that the checkoff authorization at issue in *Lockheed* did not contain such language.[12] Hence, the union's attempt to enforce deduction of dues after the employee's resignation as a union member unlawfully coerced the employee in the exercise of his Section 7 right to refrain from assisting the union.

Here, by contrast, there is no individual waiver issue, because—by virtue of the proviso to Section 8(a)(3) and the operative union-security clause—Charging Party Williams had no Section 7 right to refrain from financially assisting the Respondents with his dues during the term of the contract. Because he had no right to waive in that respect, we have no reason to inspect the language of his checkoff authorization in search of any clear and unmistakable waiver. His resignation from the Respondent Unions and his untimely attempt to revoke his dues-checkoff authorization could in no way negate his continued obligation to assist the Respondents by payment of dues in at least some amount.[13] Under these circumstances, the checkoff authorization itself concerned only the administrative method of paying that lawfully enforceable obligation; and Section 7 of the Act contains no specific rights pertaining to that method. Rather, lawful restrictions on the revocability of checkoff authoriza-

[8] *Lockheed*, supra at 329 fn. 26.

[9] Chairman Gould did not participate in *Lockheed* and expresses no view on this decision and its reasoning, but finds it unnecessary to rely on it in the instant case. Accordingly, he expresses no view about the *Lockheed* holding's viability.

[10] Specifically, Sec. 7 guarantees the right to refrain from the enumerated activities ''except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [of this Act].'' Sec. 8(a)(3), which in effect prohibits employers from engaging in employment discrimination that tends to encourage or discourage union membership, provides that the prohibition is not intended to preclude an agreement between an employer and a union that ''requires as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later . . . .''

[11] *NLRB v. General Motors Corp.*, 373 U.S. 734, 742–743 (1963).

[12] 302 NLRB at 329–330. In a companion case, *Steelworkers Local 4671 (National Oil Well)*, 302 NLRB 367 (1991), the Board found that the employee in question had signed authorizations clearly and unmistakably waiving the right to refrain from supporting the union with his dues even after resignation of membership. Hence, we found the union's continued attempt to enforce the authorization lawful, and we dismissed the complaint against the union.

[13] As noted at fn. 6 above, there is no issue in this case concerning the amount of dues Williams was obligated to pay during the period under litigation.

tions are governed by Section 302(c)(4) of the Act; and no party to this case contends that the time limits governing revocation in the checkoff authorization at issue here were unlawful under Section 302(c)(4).

In short, when an employee working under a contract with a union-security clause signs a checkoff authorization, the employee agrees to a particular method for paying whatever dues and fees can be lawfully required of him pursuant to the union-security clause. Under the terms of that clause, the employee remains obligated to make payments even after a resignation of membership and attempted checkoff authorization revocation. Under the terms of a checkoff authorization, the employee may be precluded from revoking his agreement to that method of payment, so long as the revocability restrictions are consistent with Section 302(c)(4).

Applying these principles to the Charging Party's situation, we find that he remained liable for the payment of dues irrespective of his membership status in the Respondents, and that his resignation from membership in the Respondents did not make the continued effectuation of his checkoff an infringement of his Section 7 right to refrain from union support. It follows then, that the Respondents' conduct in seeking the Employer's compliance with the contractual checkoff procedures with respect to the Charging Party, pursuant to the terms of his checkoff authorization, represents a legitimate attempt to hold both the Employer and the Charging Party to their respective contractual obligations until such time as he effects a timely revocation of his checkoff. It is not an abrogation of the Section 7 rights of the Charging Party. Thus, we find that the Respondents did not violate the Act by bringing the grievance seeking properly owing dues from the Charging Party.[14]

[14] While agreeing that the Respondents' action did not violate the Act, Member Truesdale would construe the Charging Party's premature notice of revocation as an ongoing request to be held in abeyance until such time as it may have been submitted in accordance with the limitations set forth in the authorization. In the circumstances of this case, he concludes that the Charging Party's August 7, 1991 revocation notice became effective on September 8, 1991, the beginning of the nearest window period for revocability. The Respondents' September 9, 1991 grievance, asserting a demand for unpaid dues that had become payable on the September 5, 1991 payroll date, therefore, did not seek to extend the checkoff obligation beyond the yearlong irrevocability period to which the Charging Party had agreed when he signed the authorization, but rather asked only that the properly owing dues payments be continued via the checkoff method during the yet unexpired period of checkoff irrevocability. See *Sales Service & Allied Workers Union (Capitol Husting Co.)*, 235 NLRB 1265 (1978), where the Board determined that an employee who resigned union membership and attempted an untimely revocation of checkoff authorization, but who was also subject to a lawful maintenance of membership union-security clause remained liable for union service fees through his still-viable checkoff authorization.

Accordingly, we deny the General Counsel's Motion for Summary Judgment and we grant the Respondent's Cross-Motion for Summary Judgment and shall dismiss the complaint.

ORDER

The complaint is dismissed.

MEMBER COHEN, dissenting.

I do not believe that the Charging Party clearly agreed to have his union membership dues deducted from his paycheck after his resignation from union membership. I therefore dissent.

The Section 7 right involved here is the employee right to choose to pay union dues by direct payment rather than by checkoff. Phrased differently, the issue is whether the employee clearly and unmistakably waived his right to pay these dues directly. Unquestionably, he waived this right for the period when he was a member of the Union. That is, he freely signed a document authorizing the checkoff of ''*membership dues*'' (emphasis added). This quoted language on its face suggests, however, that he did not authorize a checkoff for periods of *nonmembership*, i.e., for the period after a resignation from membership.

My colleagues argue that the employee authorized checkoff for periods when union-security dues and fees were owing, i.e., even after resignation. Concededly, the word ''membership,'' as used in the union-security proviso to Section 8(a)(3), means the obligation to pay union-security dues and fees.[1] Similarly, it may well be that the word ''membership,'' as used in a union-security clause under the 8(a)(3) proviso, is to be given the same meaning. But, it does not follow that the word ''membership,'' as used in an individual's checkoff authorization, must or should be given the same meaning. Union security and checkoff are separate and distinct concepts. Either can exist without the other. The former relates to the agreement of the employer and the union to require employees to pay union dues and initiation fees. The latter relates to the method of payment chosen by the individual to pay any dues and fees. Thus, unlike the union-security situation, the checkoff issue turns on what the employee-signer of the authorization understood and intended. In my view, the reasonable employee would reasonably understand that the term ''membership,'' in the document he signs, means membership in the ordinary sense of the word, i.e., the status of belonging to a union. It would not mean the obligation of a nonmember to pay union-security dues and fees. At the very least, it is not clear and unmistakable that the employee understands the term ''membership'' to mean the obligation to pay dues and fees after resignation.

[1] *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963).

Accordingly, I conclude that the Charging Party did not clearly and unmistakably agree to pay union-security dues via checkoff after his resignation from membership. It follows that the Respondent's conduct to compel checkoff deductions after resignation from membership was unlawful.[2]

[2] If the checkoff document had said that its terms would continue ''irrespective of membership in the union,'' a different result may well obtain. See *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322 fn. 28 (1991).